



## Foster Care ESSA and C.R.S. 22-32-138

### Quick Implementation Reference Guide

August, 2019

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[http://www.cde.state.co.us/dropoutprevention/fostercare\\_index](http://www.cde.state.co.us/dropoutprevention/fostercare_index)

*This document is intended to be a quick reference guide to effective implementation by topic. It is not intended to provide legal advice.*

## Immediate Enrollment

### **District Enrollment Policy Considerations**

The **Every Student Succeeds Act** is a federal law that contains provisions specifically for students in foster care. This law states, “(ii) when a determination is made that it is not in such child’s best interest to remain in the school of origin, the child is **immediately enrolled** in a new school, **even if the child is unable to produce records normally required for enrollment**. (iii) the enrolling school district shall immediately contact the school last attended by any such child to obtain relevant academic and other records.” 1111(g)(1)(E)(ii)(iii).

Any record, including immunizations and Individualized Education Plans are not required for enrollment, and a district cannot deny or delay enrollment due to the immediate enrollment mandate. Caseworkers are encouraged to provide as much notice as possible for schools of origin and new schools in order to facilitate a seamless transition; however, this is not always possible when a change in foster placement occurs without much notice. Under federal and Colorado law (C.R.S. 22-32-138), students in foster care must be immediately enrolled regardless of the circumstances or other district required paperwork.

Black’s Law Dictionary (2<sup>nd</sup> Ed.) defines “Immediate” as, “Present; at once; not deferred by any interval of time. In this sense, the word, without any very precise signification, denotes that action is or must be taken either instantly or without any considerable loss of time.”

### **Best Interest Determinations (BID)**

#### **Enrolling without a BID**

County Child Welfare agencies are responsible for arranging and facilitating a Best Interest Determination meeting if a child in foster care has a change in placement that could potentially result in a school move. Social Services Rules 12 CCR 2509-4, 7.301.241 require county departments to coordinate with Local Education Agencies (LEA) to conduct BID meetings prior to the school move. Not every caseworker is aware of this rule or the laws, and as a result, it is possible a child moves schools without a BID. Even if a BID has not happened, school districts are **required to immediately enroll** students in foster care. Visit <http://www.cde.state.co.us/dropoutprevention/cweltoolkit> for an FAQ about requirements of BIDs and suggested protocol for what to do if a BID did not occur

properly.

### **Educating Out of School**

There may be circumstances where a district has a concern about student safety or other concerns related to educating a child in foster care in a traditional school building. If the concern is keeping a child out of school (thus not immediately enrolled), the district still has a requirement to provide that child with an education, even if the student is not physically attending school.

### **How do I know if a child is in foster care?**

#### **County Child Welfare Notifications**

County Child Welfare Agencies are responsible for notifying school districts when a child enters an out-of-home placement. Keep in mind that schools may receive notification from counties other than where their district is located about a student in their district in an out-of-home placement. For example, a child may be in the custody of El Paso County, but could attend school in Denver. Each county is in varying stages of implementing school stability laws, and it is possible a caseworker may not be aware that they need to contact a school. Currently, there is not a “real time” system for CDE or school districts to identify students in foster care. Statute requires counties to notify schools when a child enters out-of-home placement.

#### **Free Lunch Considerations**

Students in foster care are categorically eligible for free lunch. CDHS sends CDE a list of students who are eligible for free lunch on a regular basis and the Nutrition Office at CDE sends this information to Free and Reduced Lunch Coordinators in each district. There is a lag time for caseworkers to enter foster care information into the database, which results in delays in districts receiving notifications. **When a Child Welfare Education Liaison (CWEL) receives a notice of out-of-home placement from any county, the CWEL should notify their district’s Free and Reduced Lunch Coordinator to provide the student with free meals.** The system will eventually identify the student in foster care, and there should not be a delay in the student receiving free meals.

## **Transportation**

### **Splitting Responsibility and Cost with County Agencies**

#### **Who provides transportation and when**

According to ESSA and Colorado Statute, students have a right to remain in their school of origin in the event of a change in an out-of-home placement. County human services agencies and school districts have a shared responsibility in providing, arranging, and funding transportation for the duration of time in foster care (see 22-32-138, C.R.S. for a definition of student in out-of-home placement). It is not always practical for a student to remain in the school of origin (e.g. a student who is moving placements from Grand Junction to Denver); however it is assumed it is in the child’s best interest to stay in the same school. Below is a typical example to provide guidance in setting up transportation:

1. Student is attending District A and living in District A, and County X has custody. The student moves foster homes and the new home is located in District B. It was decided at the Best Interest Determination that the student should remain in school in District A. It is now up to District A (the school of origin) to work with County X to provide, arrange, and fund transportation to the school of origin for the duration of time in foster care. District B does not have a legal responsibility to share costs in this scenario because the child will not attend a school in District B.

Keep in mind that arranging transportation is a SHARED responsibility between the school district of origin and the county who has custody. It is not solely up to the district or county to come up with a transportation plan to school of origin. Most districts and counties have a working relationship and transportation agreements; however, school districts may have students attending their school from a county they do not typically work with for transportation. In that event, it is recommended that the county and the school district work together based on their written agreements with other districts or counties.

### **Time and Distance Traveled**

Caseworkers and other BID participants determine whether or not staying in the school of origin is appropriate for the child on a case-by-case basis. Every decision should be unique to the child's situation, **therefore there are no hard limits on time and distance traveled**. For example, 5 year old traveling on a bus for an hour each way to and from school may not be appropriate; however, a high school aged student who has a one hour bus ride and is trying to finish their last semester of school to graduate could be appropriate. If a CWEL or Caseworker eludes to hard rules on this, contact the State Coordinator for Foster Care Education at CDE and/or the Educational Specialist at CDHS.

### **Billing**

#### **What is new for 2019**

School districts and counties are in the second school year where transportation funding is available for students in foster care. County Human Services Agencies and school districts need to determine a process for billing transportation costs to the state by entering into local agreements. School district and counties that are providing transportation for a student in foster care to school of origin may bill the Colorado Department of Human Services (CDHS) for 100% of the transportation cost. CDHS will reimburse the billing party 80% of the total cost of transportation. The school district and county equitably split the remaining 20%.

For more questions about billing for transportation costs, contact:

Samantha Garrett

Education Specialist

Colorado Department of Human Services

(303)866-2005

[Samantha.garrett@state.co.us](mailto:Samantha.garrett@state.co.us)

## **ESSA and IDEA Considerations**

### **Free and Appropriate Public Education**

All children have the right to a Free and Appropriate Public Education. The United States Department of Education issued a Dear Colleague Letter in 2013 to specifically address the timely transfer and enrollment of highly mobile students with disabilities. This letter contains specific guidance for schools in ensuring students in foster care are receiving FAPE in the Least Restrictive Environment (LRE). Here are a few transition considerations:

**Students with Disabilities Transferring at the beginning of the school year:** At the beginning of the school year, the law states that the school district must have an IEP in effect for each child with a

disability within its jurisdiction at the beginning of the school year. 34 CFR 300.323 (a). The failure to have an IEP in effect at the beginning of the school year may result in a denial of FAPE.

As soon as possible following development of the IEP, special education and related services must be provided in accordance with the child's IEP. 34 CFR 300.323 (c)(2). Although the phrase “as soon as possible” does not mean immediately, a delay in implementation may result in a denial of FAPE where the student is being denied a significant portion of the services identified in the IEP.

**Transfer of students on an IEP during the school year:** The law (same citation) states, "In the case of a child with a disability who transfers school districts within the same academic year, enrolls in a new school, and who had an IEP that was in effect in the same state, the LEA (school district) **shall** provide such child with a free appropriate public education, including services **comparable to** those described in the previously held IEP, in consultation with the parents, **until such time** as the school district **adopts** the previous IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law."

#### **Out-of-District Placements and Cost Considerations**

Colorado has a specific statute related to the District of Residence of a Child with a Disability (22-20-107.5, C.R.S.). Some students in foster care attend schools at residential treatment facilities, or other school environments that are specialized to meet their individual needs. This statute provides the definition of District of Residence when determining cost.

## Fee Waivers

#### **What is Considered a School Fee?**

Colorado statute (22-32-138, C.R.S) state, “A school district or school in which a student in out-of-home placement is enrolled shall waive all fees that would otherwise be assessed against the student, including, **but not limited to**, any general fees, fees for books, fees for lab work, fees for participation in in-school or extracurricular activities, and fees for before-school or after-school programs. The school district or school shall not limit the opportunity of a student in out-of-home placement to participate in in-school and extracurricular activities and before-school and after-school programs due to waiver of the participation fees.”

As a general rule, an important question to answer in the “is this a school fee or not” question is—is this opportunity available to any student as long as they can pay a fee to the district? If the answer is yes, it is a school fee. There have been some examples where a school hosts space for a private agency (e.g. daycare, Boys and Girls Club, YMCA). If the school is just hosting space and the money goes to the agency and not the school, it would probably not be considered a school fee. Keep in mind, there is nothing preventing the school from covering costs for students in foster care. Advocates for the student are also welcome to contact private entities to see if they would consider waiving the school fee.

#### **Free Lunch**

As noted in a previous section, students in foster care are categorically eligible for free lunch, which means they are not required to fill out an application for Free and Reduced Lunch. The students are verified through the Colorado Department of Human Services and the Colorado Department of Education.

## Responsibilities of a Child Welfare Education Liaison (CWEL)

**As defined in Colorado statute (22-32-138, C.R.S.). The role of a CWEL includes:**

- CWELs required at each Local Education Agency
- Reporting of CWEL contact information by August 15 of each year (now met through Consolidated Applications)
- Participation in Best Interest Determination meetings upon request
- Collaborating with county departments of human services to provide, arrange, and fund transportation to the school of origin
- Participation in threat assessment teams upon request
- Ensure immediate enrollment
- Ensure immediate transfer of records
- Honoring certified coursework and accepting partial credits (contact CDE for more information)
- Waiving fees that would otherwise be assessed

### Key Terms and Definitions

A **“student in foster care”** is synonymous with a **“student in an out-of-home placement”**, which is defined in HB 18-1306 as, “Student in out-of-home placement means a child or youth who **at any time during an academic semester** or term is in foster care and receiving educational services through a state-licensed day treatment facility or who at any time during an academic semester or term is in placement out of the home, as that term is defined in section 19-1-103 (85), including but not limited to any child or youth who is in placement outside of the home **at any time during an academic semester** or term as a result of an adjudication pursuant to Article 2 of Title 19. **‘Student in out-of-home placement’ includes a child or youth who transfers enrollment as a result of being returned to his or her home at the conclusion of out-of-home placement.**”

**“School”** means a public school of a school district, a school operated by a Board of Cooperative Services, Institute Charter School, or a state-licensed day treatment facility, or an approved facility school.

**“School of Origin”** is defined<sup>i</sup> flexibly to ensure children and youth who might not otherwise have a school of origin can attend the school where they have meaningful connections and to ensure children and youth input is considered when selecting a school. Designating a school as the “school of origin” allows the child or youth to attend there and receive transportation if necessary, even if they live outside the catchment area or transportation would not otherwise be provided.

- In most cases, the school of origin is the school in which a student was enrolled at the time of each placement into foster care. If the student’s foster care placement changes, the school of origin is the school in which the student is enrolled at the time of the change in placement. ‘School of origin’ includes “the designated receiving school at the next grade level for feeder school or zone patterns when the student completes the final grade level served by the school of origin.” This definition allows students to continue with their peers as they move from elementary to middle school or middle to high school.
- If the student is “stepping down” from a facility school, including schools in a residential child care facility or secure detention facility, and the student will no longer be enrolled in the facility school, there is flexibility to look back to schools the student has recently attended. The school of origin in these situations is either:

- the last school the student attended within the previous two years for at least one complete semester or term prior to entering the facility school; or
- another school where the student had a meaningful connection within the previous two years
- When there is more than one potential school of origin, the student's input must be given strong consideration when determining which school to designate as the school of origin.

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**For additional Questions, Contact:**

Kristin Myers, Ph.D.  
State Coordinator for Foster Care Education  
Colorado Department of Education  
[Myers\\_k@cde.state.co.us](mailto:Myers_k@cde.state.co.us)  
(303)866-6007

Samantha Garrett, LCSW  
Education Specialist  
Colorado Department of Human Services  
[Samantha.garrett@state.co.us](mailto:Samantha.garrett@state.co.us)  
(303)866-2005

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